

vessel when it is not being used as an offshore facility.

(c) In addition to a non-self-propelled barge over 300 gross tons that carries hazardous substances as cargo, for the purposes of financial responsibility under CERCLA, this subpart applies to a self-propelled vessel over 300 gross tons, even if it does not carry hazardous substances.

(d) This subpart does not apply to operators of public vessels.

§ 138.20 Definitions.

(a) As used in this subpart, the following terms have the meaning as set forth in—

(1) Section 1001 of the Oil Pollution Act of 1990 (33 U.S.C. 2701), respecting the financial responsibility referred to in § 138.10(a): *claim, claimant, damages, discharge, exclusive economic zone, liable, liability, navigable waters, mobile offshore drilling unit, natural resources, offshore facility, oil, owner or operator, person, remove, removal, removal costs, security interest, and United States*; and

(2) Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601), respecting the financial responsibility referred to in § 138.10(b): *claim, claimant, damages, environment, hazardous substance, liable, liability, navigable waters, natural resources, offshore facility, owner or operator, person, release, remove, removal, security interest, and United States*.

(b) As used in this subpart —

Acts means OPA 90 and CERCLA.

Applicable amount means an amount of financial responsibility that must be demonstrated under this subpart, determined under § 138.80(f)(1) for OPA 90 or § 138.80(f)(2) for CERCLA.

Applicant means an operator who has applied for a Certificate or for the renewal of a Certificate under this subpart.

Application means an Application for Vessel Certificate of Financial Responsibility (Water Pollution) (Form CG-5585), which can be obtained from the U.S. Coast Guard, National Pollution Funds Center as provided in §§ 138.40 and 138.45.

Cargo means goods or materials on board a vessel for purposes of transportation, whether proprietary or non-

proprietary. A hazardous substance or oil carried solely for use aboard the carrying vessel is not Cargo.

CERCLA means title I of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9601-9675).

Certificant means an operator who has a current Certificate issued by the U.S. Coast Guard, National Pollution Funds Center (NPFC) under this subpart.

Certificate means a Vessel Certificate of Financial Responsibility (Water Pollution) (Form CG-5585) issued by the NPFC under this subpart, as provided in § 138.65.

Day or days means calendar days. If a deadline specified in this subpart falls on a weekend or Federal holiday, the deadline will occur on the next working day. Compliance with a submission deadline will be determined based on the day the submission is received by NPFC.

Director, NPFC means the head of the NPFC.

E-COFR means the Electronic Certificate of Financial Responsibility web-based process located on the NPFC Web site (<https://npfc.uscg.mil/cofr/default.aspx>), which may be used by operators to apply for and renew Certificates.

Financial guarantor means a guarantor who provides a financial guaranty under § 138.80(b)(4), and is distinct from an insurer, a self-insurer or a surety.

Financial responsibility means the statutorily required financial ability to meet a responsible party's liability under the Acts.

Fish tender vessel and *fishing vessel* have the same meaning as set forth in 46 U.S.C. 2101.

Fuel means any oil or hazardous substance used or capable of being used to produce heat or power by burning, including power to operate equipment. A hand-carried pump with not more than five gallons of fuel capacity, that is neither integral to nor regularly stored aboard a non-self-propelled barge, is not equipment.

Guarantor means any person, other than a responsible party, who provides evidence of financial responsibility under the Acts on behalf of a vessel's

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responsible parties. A responsible party who can qualify as a self-insurer under § 138.80(b)(3) may act as both a self-insurer of vessels owned, operated or demise chartered by the responsible party, and as a financial guarantor for the responsible parties of other vessels under § 138.80(b)(4).

Hazardous material means a liquid material or substance that is—

- (1) Flammable or combustible;
- (2) A hazardous substance designated under Section 311(b) of the Federal Water Pollution Control Act (33 U.S.C. 1321(b)); or
- (3) Designated a hazardous material under the Hazardous Materials Transportation Act, Section 104 (46 U.S.C. 5103(a)) (1994).

Incident means any occurrence or series of occurrences having the same origin, involving one or more vessels, facilities, or any combination thereof, resulting in the discharge or substantial threat of discharge of oil into or upon the navigable waters or adjoining shorelines or the exclusive economic zone.

Insurer is a type of guarantor and means one or more insurance companies, associations of underwriters, ship owners' protection and indemnity associations, or other persons, each of which must be acceptable to the Director, NPFC.

Master Certificate means a Certificate issued under this subpart to a person who is a builder, repairer, scrapper, lessor, or seller of a vessel and is acting as the vessel's operator.

Offshore supply vessel has the same meaning as set forth in 46 U.S.C. 2101.

OPA 90 means the Oil Pollution Act of 1990 (33 U.S.C. 2701, *et seq.*).

Operator means a person who is an owner, a demise charterer, or other contractor, who conducts the operation of, or who is responsible for the operation of, a vessel. A builder, repairer, scrapper, lessor, or seller who is responsible, or who agrees by contract to become responsible, for a vessel is an operator. A time or voyage charterer that does not assume responsibility for the operation of a vessel is not an operator for the purposes of this subpart.

Owner means any person holding legal or equitable title to a vessel. In a case where a U.S. Coast Guard Certifi-

cate of Documentation or equivalent document has been issued, the owner is considered to be the person or persons whose name or names appear thereon as owner. Owner does not include a person who, without participating in the management of a vessel, holds indicia of ownership primarily to protect the owner's security interest in the vessel.

Public vessel means a vessel owned or bareboat chartered by the United States, or by a State or political subdivision thereof, or by a foreign nation, except when the vessel is engaged in commerce.

Responsible party, for purposes of OPA 90 financial responsibility has the same meaning as defined at 33 U.S.C. 2701(32), and for purposes of CERCLA financial responsibility means any person who is an owner or operator, as defined at 42 U.S.C. 9601(20), including any person chartering a vessel by demise.

Self-elevating lift vessel means a vessel with movable legs capable of raising its hull above the surface of the sea and that is an offshore work boat (such as a work barge) that does not engage in drilling operations.

Tank vessel means a vessel (other than an offshore supply vessel, a fishing vessel or a fish tender vessel of 750 gross tons or less that transfers fuel without charge to a fishing vessel owned by the same person, or a towing or pushing vessel (tug) simply because it has in its custody a tank barge) that is constructed or adapted to carry, or that carries, oil or liquid hazardous material in bulk as cargo or cargo residue, and that—

- (1) Is a vessel of the United States;
 - (2) Operates on the navigable waters;
- or
- (3) Transfers oil or hazardous material in a place subject to the jurisdiction of the United States.

Total applicable amount means the amount determined under § 138.80(f)(3).

Vessel means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.

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